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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,103	07/22/2005	Hideo Takami	OGOSH35USA	4374
270	7590	10/10/2007		
HOWSON AND HOWSON SUITE 210 501 OFFICE CENTER DRIVE FT WASHINGTON, PA 19034			EXAMINER ZHU, WEIPING	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 10/10/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/543,103	Applicant(s) TAKAMI ET AL.	
	Examiner Weiping Zhu	Art Unit 1742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 1 and 4 are currently under examination, wherein no claim has been amended in applicant's amendment filed on August 17, 2007. Applicant's election without traverse of Invention I, claims 1 and 4 in the amendment filed on August 17, 2007 is acknowledged. The original claims 6 and 10-14 have been cancelled by the applicant in the same amendment.

### ***Status of Previous Rejections***

2. The previous rejections of Claims 1 and 4 under 35 U.S.C. 103(a) as stated in the Office action dated April 17, 2007 are maintained.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2002-352483 as stated in the Office action dated April 17, 2007.

### ***Response to Arguments***

4. The applicant's arguments filed on August 17, 2007 have been fully considered but they are not persuasive.

The applicant argues that the structure of the sputtering target of JP ('483) is different from that of the instant invention and the method of manufacturing the

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sputtering target of JP ('483) is neither identical nor substantially identical to the instant invention as disclosed; therefore, the same density variation, the same B/A ratio and the same composition variation would not be provided by the sputtering target of JP ('483). In response, the examiner notes that the rejection was based on the prior art's broad disclosure rather than preferred embodiments. See MPEP 2123; the structure or composition of the prior art have to be identical or substantially identical in order to rely on *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977) or MPEP 2112.01 [R-3] I. to establish the rejection grounds. The composition of JP ('483) is identical to the claimed composition as stated in the Office action dated April 17, 2007. Furthermore, JP ('483) discloses that the structure of the sputtering target comprises  $\text{Cr}_{11}\text{Ge}_{19}$  distributed in Ge matrix (paragraph [0014] and Figure 1, translation), which is identical or substantially identical to the structure as disclosed in the instant invention. The mean particle size of 100 or 50 microns of the Cr powder of JP ('483) overlaps the disclosed particle size of 75 microns or less of the instant invention. A prima facie case of obviousness exists. See MPEP 2144.05 I. JP ('483) discloses blending Ge and Cr powders to make a mixture of 50-95 at. % Ge and 5-50 at. % of Cr (paragraph [0011], translation). It would have been obvious to one of ordinary skill in the art to use any types of the blending known in the art to blend the powders of JP ('483) with expected success, because JP ('483) discloses the same utility of any types of the blending known in the art. Therefore, as stated in the Office action dated April 17, 2007, the Ge-Cr alloy sputtering target of JP ('483) is identical or substantially identical to that of the instant disclosure and both sputtering targets are produced by identical or substantially

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identical processes, therefore a prima facie case of obviousness exists. The same density variation, the same B/A ratio and the same composition variation would be expected in the Ge-Cr alloy sputtering target of JP ('483) as in the claimed Ge-Cr alloy sputtering target.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WZ

10/1/2007

ROY KING   
SUPERVISORY PATENT EXAMINER  
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